

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR122
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
JOHN F. McCaul,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's motions for leave to proceed in forma pauperis (Filing No. 75) and to appoint counsel (Filing No. 76).

On January 31, 2007, the Defendant was sentenced to 180 months imprisonment. (Filing No. 45.) On direct appeal, the Eighth Circuit Court of Appeals affirmed this Court's judgment. (Filing No. 66.) As a result of the government's motion under Federal Rule of Criminal Procedure 35, the Defendant's sentence was lowered to 90 months. (Filing No. 71.) On November 13, 2007, the Eighth Circuit denied the Defendant's petition for rehearing and rehearing en banc. The Defendant then filed his motions for leave to proceed in forma pauperis and to appoint counsel, anticipating the filing of a motion pursuant to 28 U.S.C. § 2255. (Filing Nos. 75, 76.) The Defendant included an affidavit as to his financial status (Filing No. 75.)

Motions filed under § 2255 are filed pro se and without payment of a filing fee. After reviewing the appropriate statutes and rules, if the Defendant deems it necessary he may move for in forma pauperis status and appointment of counsel when he files his § 2255 motion. When the Court reviews his § 2255 motion on initial review, the Court will determine such issues raised together with the § 2255 motion. Counsel may not be appointed to assist with the initial filing of a § 2255 motion.

IT IS ORDERED:

1. The Defendant's motion for leave to proceed in forma pauperis (Filing No. 75) is denied without prejudice;
2. The Defendant's motion for appointment of counsel (Filing No. 76) is denied without prejudice;
3. The Clerk shall mail the appropriate form for filing a motion pursuant to 28 U.S.C. § 2255 to the Defendant; and
4. The Clerk shall mail a copy of this Order to the Defendant at his last known address.

DATED this 5th day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge